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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 SAMUEL K MCDONOUGH,

9 Plaintiff,

10 v.

11 ROBIN SMITH, et al.,

12 Defendant.

CASE NO. C19-1248-RAJ-BAT

**ORDER TERMINATING
CONSIDERATION OF REPORT
AND RECOMMENDATION**

13 Plaintiff, Sam McDonough, proceeding *pro se*, filed a complaint pursuant to 42 U.S.C. §
14 1983. The Court reviewed and screened plaintiff's complaint under 28 U.S.C. § 1915A and
15 §1915(e). In a Report and Recommendation dated September 3, 2019, the Court found and
16 recommended the following:

17 [That] plaintiff's claims relating to his "federal appeal" to his
18 criminal case be dismissed without prejudice and with leave to re-
19 file a federal habeas petition pursuant to 28 U.S.C. § 2254. The
20 Court further finds that plaintiff's § 1983 claims related to alleged
21 inadequate medical care provided by Department of Corrections
22 (DOC) staff fail to state a claim as pled. However, the Court
23 recommends that plaintiff be given an opportunity, with respect to
his § 1983 claims, to amend his complaint to cure the deficiencies
described [in the remainder of the Report and Recommendation].
The Court further recommends that (1) if plaintiff fails to file an
amended complaint, that the case be dismissed pursuant to 28
U.S.C. § 1915A and §1915(e) for failure to state a claim; and (2) if
plaintiff does file an amended complaint, that the case be referred
back to Hon. Brian A. Tsuchida for further proceedings.

1 Dkt. 8.

2 Plaintiff subsequently filed a separate 28 U.S.C. § 2254 petition in this court challenging
3 the alleged constitutional violations related to his conviction and sentence and seeking release
4 from custody. *See McDonough v. State of Washington*, 19-cv-1501-MJP-BAT. Plaintiff has also
5 now filed an amended §1983 civil rights complaint in the instant action related only to his
6 conditions of confinement claims. Dkt. 10. As such, it appears plaintiff has complied with all of
7 the recommendations contained in the Court's Report and Recommendation (Dkt. 8).
8 Accordingly, the Court directs the Clerk to terminate consideration of the Report and
9 Recommendation (Dkt. 8) as the recommendations contained therein are now moot. The Court
10 will proceed with screening of the amended complaint (Dkt. 10).

11 DATED this 7th day of October, 2019.

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BRIAN A. TSUCHIDA
United States Magistrate Judge
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